

Plymouth Park Shopping Center and Dallas & Fort Worth Building Construction Trades Council and Affiliated Locals. Case 16-CA-10480

March 10, 1983

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND
HUNTER

Upon a charge filed on June 2, 1982, by Dallas & Fort Worth Building Construction Trades Council and Affiliated Locals, herein called the Union, and duly served on Plymouth Park Shopping Center, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 16, issued a complaint on July 9, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in an unfair labor practice affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and the complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practice, the complaint alleges the Union had an economic dispute with Dillards, a retail establishment which leased space in Respondent's shopping center. The complaint further alleges that, in support of its dispute with Dillards, the Union engaged in peaceful consumer handbilling at various entrances to the Dillards retail store in Respondent's shopping center. The complaint finally alleges that Respondent violated Section 8(a)(1) by demanding that the Union cease handbilling and leave the store premises.

Respondent did not file an answer to the complaint within the 10 days specified by the National Labor Relations Board Rules and Regulations, Series 8, as amended. On August 4, 1982, counsel for the General Counsel discussed with Respondent its failure to file an answer. Thereafter, counsel for the General Counsel forwarded to Respondent a letter, dated August 5, 1982, which confirmed the August 4 conversation, discussed settlement possibilities, and extended the date for filing an answer to August 18, 1982. The letter also advised Respondent that counsel for the General Counsel intended to seek a default judgment if Respondent failed to file an answer to the complaint. Respondent has not filed an answer to the complaint.

On August 30, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on September 3, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show

Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent has not filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent specifically states that, unless an answer is filed within 10 days from the service of the complaint, all of the allegations of the complaint "shall be deemed to be admitted to be true and may be so found by the Board."

Because Respondent has failed to file an answer to the complaint, the allegations of the complaint are deemed to be admitted and are found to be true. Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is now, and has been at all times material herein, a partnership doing business as Plymouth Park Shopping Center, at 750 Plymouth in Irving, Texas, where it rents retail space to various retail establishments. During the past 12 months, in the course and conduct of its business operations, Respondent derived gross revenues in excess of \$1 million, of which in excess of \$50,000 were derived from rentals from Dillards and other retail stores,

each of which has a volume of retail sales in excess of \$500,000.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Dallas & Fort Worth Building Construction Trades Council and Affiliated Locals is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICE

At all times material herein, Dillards leased space for one of its retail stores at Respondent's shopping center, and the Union had an economic dispute with Dillards pertaining to Dillards' erection of another retail store in a shopping center in Mesquite, Texas. On or about June 1, 1982, in support of its dispute with Dillards, representatives of the Union engaged in peaceful consumer handbilling at various entrances to the Dillards store located in Respondent's shopping center. On or about June 1, 1982, Respondent demanded that the union representatives cease their consumer handbilling and leave the store premises.

We find that, by handbilling in support of its economic dispute with Dillards, the Union was engaged in protected concerted activity. We further find that, by demanding that the union representatives cease the handbilling and leave the store premises, Respondent engaged in an unfair labor practice within the meaning of Section 8(a)(1) of the Act. *Scott Hudgens*, 230 NLRB 414 (1977); *Giant Food Markets, Inc.*, 241 NLRB 727, 729 (1979).¹

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICE UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and ob-

structing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in an unfair labor practice within the meaning of Section 8(a)(1) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Plymouth Park Shopping Center is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Dallas & Fort Worth Building Construction Trades Council and Affiliated Locals is a labor organization within the meaning of Section 2(5) of the Act.
3. By demanding that representatives of the Union cease handbilling in support of an economic dispute with Dillards and leave the premises of the Dillards store in the Plymouth Park Shopping Center, Respondent has engaged in an unfair labor practice within the meaning of Section 8(a)(1) of the Act.
4. The aforesaid unfair labor practice is an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Plymouth Park Shopping Center, Irving, Texas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:
 - (a) Demanding that representatives of the Union cease handbilling in support of an economic dispute with Dillards and leave the premises of the Dillards store in the Plymouth Park Shopping Center.
 - (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:
 - (a) Post at conspicuous places in its Plymouth Park Shopping Center facility in Irving, Texas, copies of the attached notice marked "Appendix."²

¹ Since Respondent has not filed an answer to the complaint or to the Notice To Show Cause, it is therefore deemed to have admitted that it engaged in the foregoing conduct and that its conduct was unlawful. In these circumstances, we must assume that no reasonable alternatives existed for communication of the Union's message and that an accommodation between employee rights and Respondent's property rights required Respondent to permit the subject handbilling. See *Hudgens v. N.L.R.B.*, 424 U.S. 507 (1976); *N.L.R.B. v. Babcock & Wilcox Company*, 351 U.S. 105 (1956).

² In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to Order of the National Labor Relations Board".

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Copies of said notice, on forms provided by the Regional Director for Region 16, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 16, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

MEMBER HUNTER, dissenting:

I cannot agree with my colleagues that the instant Motion for Summary Judgment should be granted. The General Counsel failed to include in his complaint allegations a vital element of his *prima facie* case; i.e., that the Union had no reasonable alternatives for communicating its message. Accordingly, although by failing to file an answer Respondent has admitted engaging in the conduct

alleged, the General Counsel has not thereby established a violation of the Act. Given these circumstances, I would not grant the General Counsel's Motion for Summary Judgment.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT demand that representatives of Dallas & Fort Worth Building Construction Trades Council and Affiliated Locals cease handbilling in support of an economic dispute with Dillards and leave the premises of the Dillards store in the Plymouth Park Shopping Center.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

PLYMOUTH PARK SHOPPING CENTER

ant to a Judgment of the United States Court of Appeals Enforcing an
Order of the National Labor Relations Board."